

**REVISED AND RESTATED WATER SUPPLY CONTRACT
BETWEEN
SAN PATRICIO MUNICIPAL WATER DISTRICT
AND
THE CITY OF INGLESIDE, TEXAS**

THE STATE OF TEXAS §
 §
COUNTY OF SAN PATRICIO §

This Revised and Restated Water Supply Contract between San Patricio Municipal Water District and the City of Ingleside, Texas (the "Revised and Restated Contract"), is made and entered into by and between San Patricio Municipal Water District, a conservation district and political subdivision of the State of Texas, duly created by the Legislature of the State of Texas, acting herein by and through its duly authorized officers, hereinafter called the "District," and the City of Ingleside, Texas, a municipal corporation, duly organized under the laws of the State of Texas, acting by and through its duly authorized officers, hereinafter called the "City."

WITNESSETH:

WHEREAS, the District and the City entered into a Contract and Agreement dated May 13, 1963 (the "Contract"), pursuant to which the District has furnished a water supply to the City; and

WHEREAS, the Contract was amended by the Water Contract Amendment (the "First Amendment") dated November 15, 1983; and

WHEREAS, the Contract was again amended by the Second Amendment to Water Supply Contract ("Second Amendment") dated August 15, 1998; and

WHEREAS the Contract was again amended by the Third Amendment to Water Supply Contract between San Patricio Municipal Water District and the City of Ingleside, Texas ("Third Amendment") dated October 14, 2008; and

WHEREAS, the Contract, the First Amendment, the Second Amendment and the Third Amendment are hereafter referred to as the "Prior Contract," and it is now necessary to revise and restate the Prior Contract in its entirety to accommodate the desires of the parties; and

WHEREAS, some or all of the District's retail provider customers have been cited by the Texas Commission on Environmental Quality (the "TCEQ") for failure to comply with 30 TAC §290.45 which requires purchased water systems to have a wholesale contract that obligates the wholesaler to provide an amount of water that, with the addition of the actual production capacity of the purchased water system, is equal to at least 0.6 gpm per connection; and

WHEREAS, 30 TAC §290.45 authorizes alternative capacity requirements, as submitted by a licensed professional engineer, and the District has caused to be prepared the City of Ingleside - Alternative Capacity Requirements Study, prepared by James Schwarz, P.E., and that study concluded that the number 0.47 gpm may be substituted for the 0.6 gpm requirement in the rule; and

WHEREAS, the District is willing to commit to providing 0.47 gpm per connection to the City provided that the City provide information annually on its number of connections and water usage, and provided that the City not serve any nonresidential customer with an amount of water exceeding the amount specified in this Revised and Restated Contract, unless such service is consented to in writing by the District.

AGREEMENT

NOW THEREFORE, the District and the City, each acting by and through its official representatives duly authorized by the governing body of each party to execute this Revised and Restated Contract, do hereby agree as follows:

ARTICLE I Revised and Restated Agreement

1.1 **Effective Agreement.** This Revised and Restated Agreement supercedes and replaces the Prior Agreement in its entirety, effective as of the Effective Date.

ARTICLE II Quantity

2.1 **Quantity.** The District currently receives raw water, and has the right to receive treated water, from the City of Corpus Christi pursuant to the Raw Water Supply Contract between the City of Corpus Christi and San Patricio Municipal Water District dated March 17, 1997 and the Treated Water Supply Contract between the City of Corpus Christi and San Patricio Municipal Water District dated March 17, 1997, which contracts are hereinafter referred to as the "Corpus Christi Raw Water Contract" and the "Corpus Christi Treated Water Contract," respectively. Subject to the provisions of Articles XI and XVI hereof, and the provisions of the Corpus Christi Raw Water Contract and Corpus Christi Treated Water Contract, the District agrees to sell and deliver to the City at the delivery points hereinafter specified, and the City agrees to purchase and take at said delivery points, all water required by the City during the period of this agreement for its own use and for distribution to all customers served by the City's water distribution system in an amount up to 0.47 gpm per connection. The District will use its best efforts to remain in the position to furnish water sufficient for the reasonable demands of the City, but its obligations shall be limited to the quantity of water available to it under its contracts with the City of Corpus Christi and such other sources of water supply as the District may be able to obtain, having due regard for the equitable rights of other customers of the District to water from the same source.

The alternative capacity requirement described in the foregoing recitals was approved by the Executive Director of the TCEQ in a letter dated April 25, 2007, signed on behalf of the Executive Director by Amanda Jigmond. If the Executive Director revokes or revises the alternative capacity requirement, the District and the City will work together in good faith in an effort to amend the provisions of this foregoing paragraph 2.1 to comply with the Executive Director's revised requirements.

ARTICLE III

Quality

3.1 **Quality.** The quality of water supplied to the City at the delivery points shall be sufficient to meet the requirements for potable water established by the Texas Commission on Environmental Quality ("TCEQ") and the United States Environmental Protection Agency ("EPA"). The District shall not be responsible for maintaining any particular amount of disinfectant in the City's system.

ARTICLE IV

Points of Delivery and Title

4.1 **Points of Delivery and Title.** The District will deliver water to the City at the existing delivery points and such other delivery points as may be agreed upon by the managers of the District and the City. The District will deliver water at the outlet of the existing meter or meters and such other meters as may be agreed upon by the managers of the District and the City. Title to water shall pass to the City when it passes through the meters at the points of delivery.

ARTICLE V

Measuring of Water

5.1 **Measuring of Water.** The District has furnished and installed, and shall operate and maintain at its own expense at said delivery points, the necessary equipment and devices of standard type for measuring properly the quantity of water delivered under this agreement. Such meter or meters and other equipment so installed shall remain the property of the District. The City may, at its option and its own expense, install and operate a check meter to check each meter installed by the District, but the measurement of water for the purpose of this Revised and Restated Contract shall be solely by District's meter.

The District's meter shall be checked annually at the expense of the District by the District's employees or agents as to accuracy of registration. Whenever the District meter is to be checked, the District shall notify the City ten (10) days in advance of such check in order that the City may have a representative present as a witness. If either the City or the District at any time shall notify the other that it desires a special test of the District meter, the District and the City shall cooperate to secure an immediate determination of the accuracy thereof and may make joint observation of any such tests and adjustments. If upon such special tests the meter is found to be less than two percent

(2%) high or low, the cost of such test shall be paid by the party requesting it; otherwise, by the District. If upon any test the meter tested is found to be more than two percent (2%) high or low, the registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (½) of the time elapsed since the last date of meter check, but in no event further back than a period of six (6) months. If for any reason the meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available.

The City shall have access to the metering equipment of District at all reasonable times, but the reading, calibration, checking and adjustment thereof shall be done by the employees or agents of the District.

For the purpose of this Revised and Restated Contract, the original record or reading of the meter shall be the journal or other record book of District in its office in which the records of the employees or agents of the District who take the reading are or may be transcribed. Upon request, District will permit the City to have access to the records of the District in the office of the District during reasonable business hours.

ARTICLE VI Unit of Measurement

6.1 Unit of Measurement. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

ARTICLE VII Billing and Payment

7.1 Billing and Payment. The District shall read all of the meters monthly and will promptly render monthly bills to the City based on such readings. Such bills shall be due and payable within twenty-five (25) days from the date the same are deposited in the United States mails, properly stamped and addressed to the City.

7.2 Late Payment. In the event the City shall fail to make any payment required to be made to the District under this Revised and Restated Contract, within the time specified herein, interest on the amount due shall accrue at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by law, whichever is less, from the date such payment becomes due, until paid in full with interest as above specified. In the event any such payment is not made within sixty (60) days from date such payment becomes due, the District may, at its option, discontinue the delivery of water to the City until the amount then due to the District is paid in full with interest as above specified.

ARTICLE VIII
Special Conditions

8.1 **Use of Streets and Alleys.** Should any pipeline or appurtenances, including communication lines, owned by the District be installed, whether now or later, in any street, alley or public way within the boundaries of the City, as same are now constituted or as may hereafter be extended, the City hereby grants to the District the right, privilege and franchise of using such streets, alleys and public ways for the purpose of maintaining, operating, laying, repairing and removing such pipelines and appurtenances, including communication lines.

8.2 **Sources of funds For Payment and Sufficiency of Rates and Charges.** The District shall never have the right to demand payment by the City of any obligation assumed or imposed on it under and by virtue of this Revised and Restated Contract from funds raised or to be raised by taxation. City's obligation under this Revised and Restated Contract shall never be construed to be a debt of the City of such kind as to require it under the laws of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by the City hereunder are to be made from the revenues received by the City from its waterworks system.

The City represents and covenants that the water supply to be obtained pursuant to this Revised and Restated Contract is essential and necessary to the operation of its waterworks system, and that all payments to be made hereunder by it will constitute reasonable and necessary "operating expenses" of the City's waterworks system as defined in Chapter 1502 of the Government Code, as amended, and that all such payments will constitute reasonable and necessary "operating expenses" of the City's waterworks system under any and all revenue bond issues of the City, with the effect that the City's obligation to make payments from its waterworks revenues under this Revised and Restated Contract shall have priority over its obligations to make payments of the principal of and interest on any and all of its revenue bonds.

City agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will make possible the prompt payment of all expenses of operating and maintaining its waterworks system, including all payment contracted hereunder, and the prompt payment of the principal of and interest on its obligations payable from the revenues of its waterworks system.

ARTICLE IX
Service to Certain New Nonresidential Customers
and Annual Reporting of Number of Connections

9.1 **District Consent Required for Service to Certain New or Expanding Nonresidential Customers.** If the City wants to serve a new nonresidential customer, or expand the service to an existing nonresidential customer, where, for the new nonresidential customer, or for the expansion to an existing nonresidential customer, the projected increase in the average daily

flow will exceed 10% of the average daily flow of the City, averaged over the preceding five calendar years, the City must obtain written consent from the District before providing such new service.

9.2 Annual Reporting of Connections. Each year, on or before January 31, the City will provide the District with a report on the number of connections served at the end of the previous year, in a format that enables the District to determine the number of connections that must be served at 0.47 gpm pursuant to 30 TAC §290.45. The City will, at the same time, provide a projection of that information for the year in which the report is made.

ARTICLE X Price of Water

10.1 Rates to Be Cost Based. All rates charged pursuant to this Revised and Restated Contract shall be set to recover the cost of service, based on generally accepted ratemaking principles, including those set forth in the American Water Works Association AWWA Manual M1 on water rates.

10.2 Rate Adjustment. If in any fiscal year there is a material difference between the District's revenues and expenses, as compared to the revenues and expenses as projected in the applicable budget for that year, as determined by the District, the District may, after consultation with the City, to the extent deemed necessary or advisable by the District, in its sole discretion, change the rates to be charged to the City during that year.

10.3 District Budget. The District's fiscal year shall be from January 1 through December 31 of each year, or such other period as the District, after sixty (60) days written notice to the City, shall adopt. Not later than the seventh (7th) day after the date of the District's Board of Directors October budget review meeting each year, commencing with the District's fiscal year in which this Revised and Restated Contract becomes effective, the District shall provide the City with a copy of the District's proposed budget for the following fiscal year, showing the budgeted total annual rate, and the components thereof, to be paid by the City to the District for the fiscal year of the District to which the budget applies for sale and purchase of water under this Revised and Restated Contract. City shall have thirty (30) days to review and comment on the proposed budget. The District shall adopt its final budget as soon as practicable following the expiration of such thirty (30)-day period and shall deliver to the City a copy of each final budget within five (5) days after the adoption thereof.

ARTICLE XI Force Majeure

11.1 Force Majeure. If the District should be prevented, wholly or in part, from furnishing water to the City under this Revised and Restated Contract by reason of acts of God, unavoidable accident, acts of the public enemy, strikes, floods, fires, governmental restraint or

regulations, pump station failures, breaks in pipelines or for any other cause beyond the District's control, then the obligation of the District to deliver water to the City shall be temporarily suspended during the continuance of such force majeure.

The rights of the City to obtain delivery of water from the District shall also be subject to all rights of the City of Corpus Christi with respect to the furnishing of water by said City of Corpus Christi to the District under the conditions of the District's contracts with the City of Corpus Christi. Reference is here made to each of said contracts, the terms of which are familiar to both of the parties hereto.

No damage shall be recoverable from the District by reason of the temporary suspension of delivery of water due to any of the causes above mentioned or due to the failure of the City of Corpus Christi to deliver water to the District. If the District's ability to deliver water to the City is affected by any of the causes above mentioned, the District shall promptly notify the City in writing, giving the particulars as soon as practicable after the occurrence of the cause or causes for such interruption.

If the supply of water available to the District is insufficient for any reason to serve the requirements of all of its customers, then the available amount of water will be allocated by the District pursuant to the provisions of the District's Drought Contingency Plan, as that plan may be amended from time to time.

ARTICLE XII Alterations and Repairs

12.1 **Alterations and Repairs.** It is expressly recognized by the City that the District may be compelled to make necessary alterations, repairs and extensions of new or additional water transportation facilities from time to time during the life of this Revised and Restated Contract, and any suspension of delivery to the City due to such operation shall not be cause for claim of damage on the part of the City, provided all reasonable effort is used by the District to provide the City with water in accordance with this Revised and Restated Contract. In such case, the District shall give the City as much advance notice as may be practicable of the suspension of delivery and of the estimated duration thereof.

ARTICLE XIII Term

13.1 **Term.** Unless sooner terminated or extended by mutual agreement of the parties hereto, this Revised and Restated Contract shall be in force and effect at any time while any of the District's bonds remain outstanding, or thirty (30) years from the Effective Date of this Revised and Restated Contract, whichever is later.

ARTICLE XIV
Effective Date

14.1 **Effective Date.** The Effective Date of this Revised and Restated Contract shall be the date on which it has been executed by both parties.

ARTICLE XV
Modification

15.1 **Modification.** This Revised and Restated Contract shall be subject to change or modification at any time but only with the mutual consent of the governing bodies of each of the parties hereto.

ARTICLE XVI
Corpus Christi Contract and Drought Contingency Plan

16.1 **Corpus Christi Contract and Drought Contingency Plan.** The City acknowledges that it is required by Sec. 11.1272, Water Code, to develop a drought contingency plan consistent with the appropriate approved regional water plan. The City also acknowledges that the Corpus Christi Raw Water Contract and the Corpus Christi Treated Water Contract require that, if the City of Corpus Christi implements any measures under its Water Conservation and Drought Contingency Plan, the District shall within thirty (30) days of notice of the implementation of any restrictions, surcharges or rationing by the City of Corpus Christi, impose similar restrictions, surcharges or rationing measures on its customers. Any contract for the resale of water furnished by the District shall contain a similar condition.

Accordingly, the City agrees that it will adopt a water conservation plan and drought contingency plan consistent with those of the City of Corpus Christi, as the latter may be amended from time to time.

ARTICLE XVII
Forum

17.1 **Forum.** Any disputes between the parties to this Revised and Restated Contract concerning the subject matter of this Revised and Restated Contract shall be submitted for resolution to the District Court of San Patricio County, Texas.

ARTICLE XVIII
Entirety

18.1 **Entirety.** This Revised and Restated Contract supersedes all previous agreements or representations, either written or verbal, heretofore in effect between the District and the City, made with respect to matters herein contained.

ARTICLE XIX
In Witness Whereof

19.1 **In Witness Whereof.** The parties hereto have caused this document to be executed by their duly authorized representatives as shown below.

SAN PATRICIO MUNICIPAL WATER DISTRICT

By: _____

President

Date of Execution: _____

ATTEST:

Secretary

[SEAL]

THE CITY OF INGLESIDE, TEXAS

By: _____

Mayor

Date of Execution: _____

ATTEST:

Secretary

[SEAL]